

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

| | | |
|--------------------------------------|---|---------------------------|
| John L. Penza, |) | C/A No. 8:10-2361-JFA-JDA |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | ORDER |
| |) | |
| DHO Sharon Patterson; South Carolina |) | |
| Department of Corrections, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

The *pro se* plaintiff, John L. Penza, brings this action pursuant to 42 U.S.C. § 1983 wherein he claims that in 2009 he was denied procedural due process, and suffered other constitutional violations while he was an inmate at the South Carolina Department of Corrections (SCDC). The defendants removed this action to this court from the Richland County Court of Common Pleas.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation wherein she suggests that this court should grant summary judgment² to the defendants. Specifically, the Magistrate Judge opines that defendant SCDC is not a “person” amenable to suit under § 1983, and that defendant Patterson, in her official capacity,

¹ The Magistrate Judge’s review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

² An order was issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) notifying petitioner of the summary dismissal procedure and possible consequences if he failed to adequately respond to the motion for summary judgment. Petitioner responded to the motion.

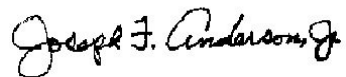
is entitled to Eleventh Amendment immunity. Moreover, the Magistrate Judge suggests that the plaintiff's claims against defendant Patterson in her individual capacity have not been exhausted and thus should be dismissed. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation and without a hearing.

The plaintiff was advised of his right to file objections to the Report and Recommendation, but has failed to do so. In the absence of specific objections to the Report of the Magistrate Judge, this court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds the Magistrate Judge's recommendation to be proper and incorporates the Report herein by reference. Accordingly, the defendants' motion for summary judgment (ECF No. 22) is granted and this action is dismissed with prejudice.

IT IS SO ORDERED.

November 21, 2011
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge